

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1 and 22 of the)	WT Docket No. 12-40
Commission's Rules a with Regard to the)	
Cellular Service, Including Changes in)	
Licensing of Unserved Areas)	
)	
Amendment of the Commission's Rules with)	
Regard to Relocation of Part 24 and Part 27)	
)	
Interim Restrictions and Procedures for)	
Cellular Service Applications)	

COMMENTS OF RCA—THE COMPETITIVE CARRIERS ASSOCIATION

RCA—The Competitive Carriers Association (“RCA”) submits these comments in response to a Notice of Proposed Rulemaking (“*Notice*”) in the above captioned proceeding.¹

The *Notice* proposes to revise the current Cellular licensing model from site-based to geographic-based, promoting greater flexibility and consistency while removing certain administrative burdens on Cellular licensees. In light of the competitive and administrative benefits, RCA supports the FCC’s proposal to provide Cellular licensees increased flexibility to construct and operate facilities in a larger geographic area, without prior Commission approval. RCA also supports the FCC’s proposed competitive bidding procedures, fostering new and

¹ *In re* Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission’s Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Applications, *Notice of Proposed Rulemaking and Order*, WT Docket No. 12-40, RM No. 11510, ¶ 59–61 (Feb. 15, 2012) [hereinafter *Cellular Licenses NPRM*].

increased competition through provision of incentives to new entrants and small, regional or mid-tier carriers.

RCA represents the interests of more than 100 competitive wireless carriers, including many rural and regional carriers that have benefitted from the current Cellular licensing scheme. By establishing a five-year build-out period and requiring automatic relinquishment in areas that are not constructed, smaller, rural and regional carriers gained access to the Cellular spectrum, allowing them to build and deploy wireless services to unserved and underserved parts of the country. Further, the FCC had the foresight to adopt the analog compatibility standard, ensuring access to interoperable devices and roaming capabilities. Through this, the FCC laid the groundwork for a competitive wireless industry, later bolstered by spectrum auctions.

Even the FCC noted, the “site-based licensing model has proven successful over time.”² As a result of the competitive policies adopted for Cellular services, the wireless industry flourished, until recently. As RCA continually stresses,³ the wireless industry has become dangerously concentrated, constituting an effective duopoly. Verizon and AT&T exercise market power over all critical inputs including spectrum, roaming, and devices.⁴ Chairman

² *Cellular Licenses NPRM*, ¶ 20.

³ See, e.g., Comments of RCA – The Competitive Carriers Association, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 11-186 (filed Dec. 5, 2011); Comments of RCA – The Competitive Carriers Association, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 11-186 (filed Apr. 13, 2012).

⁴ In its two most recent Wireless Competition Reports, the FCC has been unable to certify that the wireless industry is characterized by effective competition. *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd. 11407, 11435 ¶16 (2010); *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, 26 FCC Rcd. 9664, 9691 ¶ 14 (2011).

Genachowski accurately stated that spectrum is the “invisible infrastructure that sustains our wireless communications.”⁵ Without sufficient usable spectrum, carriers’ ability to innovate and remain relevant in a fast-changing industry is severely compromised. Worse, the abandoned interoperability policy, established with the birth of Cellular service, is preventing rural and regional carriers from deploying the latest mobile broadband technology using the spectrum they do have.⁶

With these competitive challenges in mind, RCA supports the FCC’s proposal to revise the Cellular licensing scheme. While rural and regional carriers significantly benefit from the original scheme, as mentioned above, RCA agrees that outside of Alaska and rural parts of the West, most Cellular service markets are completely licensed. In its NPRM, the Commission noted some industry concern about CTIA’s proposal. Specifically, some RCA carrier members urged retention of the site-based licensing model, allowing rural and regional carriers to maintain and improve their Cellular networks.⁷ In its NPRM, the FCC struck the right balance through a two-stage transition process, preserving direct access to an Unserved Area through the current site-based process for an extended period of time. This is particularly important for rural and

⁵ Julius Genachowski, Chairman, Fed. Commc’n Comm’n, Prepared Remarks of Chairman Julius Genachowski, Broadband Acceleration Conference (Feb. 9, 2011).

⁶ *In re Promoting Interoperability in the 700 MHz Commercial Spectrum; Interoperability of Mobile User Equipment Across Paired Commercial Spectrum Blocks in the 700 MHz Band*, Notice of Proposed Rulemaking, WT Docket No. 12-69, RM No. 11592 (Terminated), ¶ 22 (Mar. 21, 2012).

⁷ Comments of GCI Communication Corp., *Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing*, RM No. 11510 (filed Feb. 23, 2009); Comments of Commnet Wireless, LLC, *CTIA Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing*, RM No. 11510 (filed Feb. 23, 2009); Comments of United States Cellular Corporation, *Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing*, RM No. 11510 (filed Feb. 23, 2009).

regional carriers, which are struggling to get access to additional spectrum or deploy their own spectrum, to complete cellular deployments. Accordingly, RCA supports the FCC's Cellular licensing transition model.

RCA also supports the FCC's transition proposal with competitive bidding consistent with previous auction procedures. The FCC is required to disseminate licenses among "a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women" and to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."⁸ For the benefit of most RCA carrier members, the Commission primarily has used small business bidding credits to promote auction participation from designated entities.⁹ In the recently enacted Middle Class Tax Relief and Job Creation Act of 2012,¹⁰ Congress reaffirmed the Commission's role in supporting competition through spectrum management policies. As explained by Representative Fred Upton, the FCC retains its authority "to adopt and enforce rules of general applicability."¹¹ Representative Henry Waxman further explained, "... Congress intends for the FCC to continue to promote competition through its spectrum policies.... [Congress] thus preserves the FCC's ability to require, among other things, the divestiture of specific spectrum, such as spectrum below 1 GHz, in order to promote

⁸ 47 U.S.C. §§ 309(j)(3)(B), (4)(D).

⁹ See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2391-92 ¶¶ 241-44 (1994) (*Competitive Bidding Second Report and Order*).

¹⁰ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, §6404 (2012).

¹¹ 158 Cong. Rec. E238 (daily ed. Feb. 24, 2012) (statement of Rep. Upton).

competition.”¹² RCA wholeheartedly supports and encourages the Commission’s use of appropriate spectrum management policies to promote competition, especially in this overly concentrated market.

Many RCA carrier members have been able to leverage these small business bidding credits to successfully compete in FCC spectrum auctions. Since the FCC began auctioning spectrum and utilizing auction bidding credits, RCA carrier members have increasingly participated in FCC spectrum auctions, leading to greater auction competition and increased revenues.¹³ Without bidding credits, many RCA carrier members would not be able to participate in auctions or compete with AT&T and Verizon Wireless to win spectrum licenses.

Although providing bidding credits for small businesses is an important first step to fulfill the goals of the National Broadband Plan, other mechanisms are needed to encourage increased participation from new entrants and existing carriers who do not have sufficient spectrum to offer robust broadband services. One important step is ensuring that all spectrum within a particular band is interoperable. When auctioning this spectrum, the FCC must require that the Cellular spectrum is interoperable with all other Cellular spectrum already licensed within the appropriate band with similar technology.

The record developed throughout this proceeding clearly reflects support for the FCC’s proposal.¹⁴ The proposal also provides regulatory parity among Cellular licensees and commercial licensees operating in other bands. While regulatory parity is not always in the

¹² 158 Cong. Rec. E266 (daily ed. Feb. 28, 2012) (statement of Rep. Waxman).

¹³ In fact, in Auction 73 for Lower 700 MHz spectrum, Lower A Block licenses, bid on and won considerably by rural and regional carriers, commanded a higher price per megahertz/pop than the Upper C Block spectrum. Much of this competition was the result of smaller, rural and regional carriers that were able to take advantage of the FCC’s auction bidding credits and smaller geographic area licenses.

¹⁴ *Cellular Licenses NPRM*, ¶ 19.

public interest, in this instance, the proposed transition process and the reduced administrative burdens provide compelling reasons for the Commission to adopt consistent wireless regulations. RCA encourages the FCC to adopt its proposal to move to a geographic-based Cellular licensing model and to take measures when auctioning the Cellular spectrum that foster competition.

Respectfully submitted,

/s/

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May 15, 2012